

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY SHEFCYK, individually and as parental guardian of K.F., a minor,	:	
	:	
	:	
Plaintiff	:	NO. 2:21-CV-03413 - MSG
	:	
vs.	:	
	:	
TEMPLE UNIVERSITY HOSPITAL, INC, and THE UNITED STATES OF AMERICA	:	
	:	
	:	
Defendants	:	

**RESPONSE OF DEFENDANT, TEMPLE UNIVERSITY HOSPITAL, INC.,
TO UNITED STATES OF AMERICA’S MOTION TO DISMISS**

Defendant, Temple University Hospital, Inc., by and through its undersigned counsel, Burns White LLC, hereby responds to the Motion to Dismiss of Co-Defendant, The United States of America, as follows:

The Temple Defendants take no position on the United States’ Motion to Dismiss Plaintiff’s claims set forth in the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). However, the cross-claim by the Temple Defendants against the United States, which the United States has not moved to dismiss, serves as an independent basis for subject matter jurisdiction in federal court. *See Carr v. American Red Cross*, 17 F.3d 671 (3d Cir.1994). That remains the case even if Plaintiff’s claims against the United States are dismissed. *See Young v. Temple University Hospital*, Civ. A. No. 19-1174, 2019 WL 5569510 at *11-12 (E.D. Pa. October 28, 2019)(Goldberg, J.)(Court rejected United States’ motion to dismiss Temple Defendants cross-claims, holding that irrespective of dismissal of plaintiffs’ claims against United States for failure

to exhaust administrative remedies, Temple defendants' cross-claims against the United States provided independent basis of federal jurisdiction, and Court could properly exercise supplemental jurisdiction as to plaintiffs' claims against Temple defendants which derive from common set of facts). *See, also, Tomlin v. Pease*, Civ. A. No. 14-202, 2014 WL 1340624, at *4 (E.D. Pa. April 4, 2014)(Court denied motion to dismiss cross-claims against United States for lack of subject matter jurisdiction, stating that "FTCA cross-claims must proceed in federal court regardless of whether the plaintiff has a claim against the United States."); *Rodgers v. Southeastern Penn. Trans. Co., et al.*, Civ. A. No. 06-1640, 2006 WL 2924562 (ED. Pa. 2006).

BY: /s/ Richard S. Margulies, Esq.
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Dated: July 21, 2022

CERTIFICATE OF SERVICE

I, Richard S. Margulies, Esquire, hereby certify that on this date, I filed electronically with the Court Defendant Temple University Hospital, Inc.'s Response to the USA's Motion to Dismiss.

I further certify that I served the below-listed parties as follows:

VIA ECF

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By: /s/ Richard S. Margulies, Esq.

RICHARD S. MARGULIES

Dated: July 21, 2022